NTP, Inc. v. Cellco Partnership Doc. 12 Att. 2

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

JAN 11 2007

DAVID J. MALAND, CLERK
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DATA TREASURY CORP.	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 2:06-CV-72 (DF)
	§	
WELLS FARGO & COMPANY, et al.,	§	
	§	
Defendants.	§	

ORDER

The Court recently issued an order to stay litigation in three related cases, pending certain stipulations by the defendants in those matters. *See* Civil Action No. 2:05-CV-291, Doc. No. 98; Civil Action No. 2:05-CV-292, Doc. No. 107; Civil Action No. 2:05-CV-293, Doc. No. 98. Certain Defendants in this action have expressed a willingness to stipulate to the same conditions. The Court finds that a similar order in this action is appropriate. However, the Court points out that any stay pending reexamination by the United States Patent and Trademark Office is applicable only to the so-called "Ballard Patents." Any stay issued by the Court is not applicable to discovery or proceedings related to the "Huntington Patents." Accordingly, it is hereby

ORDERED that within seven (7) days from the date of entry of this Order the Defendants shall either (1) file with the Court a signed copy of the following stipulation, or (2) notify the Court in writing of their decision not to sign the following stipulation:

> As a condition of the stay, Defendant may not argue invalidity at trial based on one or more prior art printed publications that were submitted by the petitioner in the reexamination proceedings. However, Defendant will be permitted to rely for obviousness on the combination of printed publication reference that was submitted by petitioner in the reexamination with prior art that was not so submitted.

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ORDERED that as to each Defendant entering into the stipulation, a stay of the proceedings related to the "Ballard Patents" in this case shall ensue. The Plaintiff may file a motion to lift the stay following further Office Action in the reexamination proceeding.

It is so **ORDERED**.

Signed this 12th day of January, 2007

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE